

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee

FROM: Martin P. Cleveland

SUBJECT: Little Papio Creek Channel Culverts Project
Interlocal Cooperation Agreement with City of Omaha
For Design of Drainage Structure Rehabilitation

DATE: May 3, 2021

The Little Papio Creek Channel Project is located between Spaulding Street and Q Street in Omaha, NE and is a federally constructed flood control channel completed in January 1970. The District serves as the local project sponsor and is required to operate, maintain, and repair the channel and its appurtenances to keep it in safe operating condition to remain in Corps of Engineers Public Law (PL) 84-99 assistance program. The District periodically (5-year inspection cycle) inspects the Little Papio Project culverts and has identified 45 culverts that need to be repaired due to deficiencies, such as perforated flow lines. Enclosed are location maps that show the deficient culvert sites. On February 13, 2020, the Board of Directors approved a contract with FYRA Engineering to provide professional services for design, permitting and right-of-way and bidding for the rehabilitation of the 45 deficient culverts.

The District is ultimately responsible to maintain the Little Papio Creek Channel Project culverts, due to Corps of Engineers PL 84-99 requirements for flood control projects. The City of Omaha is responsible for twenty-three (23) of the forty-five culverts, as they were installed by the City. It is being recommended that the City of Omaha reimburse the District for the portion of professional services related to City owned culverts. The City's share of the culvert project consists of 59% of the estimated total construction costs and therefore it was concluded that the City reimburse the District for 59% of the design costs for the culvert project.

Enclosed is a proposed Interlocal Cooperation Agreement with the City of Omaha for Design of Drainage Structure Rehabilitation, which provides for City reimbursement of design costs up to a maximum of \$350,000.

Management recommends that the Programs, Projects, and Operation Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Little Papio Creek Channel Project Design of Drainage Structure Rehabilitation Interlocal Cooperation Agreement with the City of Omaha, with a reimbursement maximum not to exceed limit of \$350,000, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

LITTLE PAPIO CHANNEL CULVERTS REHABILITATION PROJECT



LITTLE PAPIO CHANNEL CULVERTS REHABILITATION PROJECT


Center St. - Dodge St.



LITTLE PAPIO CHANNEL CULVERTS REHABILITATION PROJECT

Dodge St. - Keystone Dr.





0 500 1,000 US Feet

Date Printed: 1/13/2021

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INTERLOCAL COOPERATION AGREEMENT

Between

THE CITY OF OMAHA, NEBRASKA

And

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

For

**DESIGN OF DRAINAGE STRUCTURE REHABILITATION FOR
LITTLE PAPIO CREEK/LEVEE CHANNEL PROJECT**

THIS AGREEMENT (hereinafter “**THIS AGREEMENT**”) is made by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (the “**NRD**”) and the **CITY OF OMAHA, NEBRASKA** (the “**CITY**”), pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat. §§ 13-801, et seq.).

WHEREAS, twenty-three (23) culverts along or near the Little Papio Creek Levee/Channel from Keystone Drive in Omaha to north of L Street in Omaha which were installed by the CITY (Structure Nos. LP-L04, LP-L04A, LP-L12, LP-L13, LP-L15A, LP-L31, LP-L33, , LP-L36, LP-L37, LP-L38, LP-L44, , LP-L49, LP-L50, LP-L55, LP-L56, LP-L63, LP-L84, LP-R13, LP-R15, LP-R19, LP-R21, LP-R24, LP-R27 and as identified in the Little Papio Channel Culverts Rehabilitation Project- Pipe Inspection Report marked Exhibit “A” that is attached hereto and incorporated herein) (the “**CITY CULVERTS**”), and fourteen (14) culverts along or near the Little Papio Creek Levee/Channel from Keystone Drive in Omaha to north of L Street in Omaha which were installed or assumed by the NRD (Structure Nos. LP-L06, , LP-L67, LP-L82, LP-R07, LP-R08, LP-R14, LP-R17, LP-R22, LP-R36A, LP-R37, LP-R61, LP-R62, LP-R63, and LP-R65 also identified in the Pipe Inspect Report marked Exhibit “A” that is attached hereto and incorporated herein) (the “**NRD CULVERTS**”), and eight (8) culverts along or near the Little Papio Creek Levee/Channel from Keystone Drive in Omaha to north of L Street in Omaha which were installed or assumed by other property owners (Structure Nos. LP-L07, LP-L23, LP-

L26, LP-L35, LP-L48, LP-R33, LP-R47 and LP-R51) (the “**OTHER CULVERTS**”). The OTHER CULVERTS, NRD CULVERTS and CITY CULVERTS, (collectively, the “**CULVERTS**”), are in need of rehabilitation and repair; and,

WHEREAS, the NRD and the CITY desire to repair, rehabilitate and restore the CULVERTS (the “**PROJECT**”); and,

WHEREAS, the NRD intends to retain and compensate engineers (the “**ENGINEERS**”) to design and engineer the PROJECT; and,

WHEREAS, the NRD desires to receive cost-sharing assistance from the CITY for the costs of the PROJECT relating to the CITY CULVERTS; and,

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants of parties hereinafter expressed, the parties hereby agree as follows:

1. PROJECT BENEFITS. The parties do hereby find and determine that the PROJECT will be of predominantly general benefit to the CITY and the NRD, with only an incidental special benefit.

2. PROJECT PARTICIPANTS. The PROJECT shall be undertaken without any separate entity being created, and the duties and responsibilities of the parties with respect to the PROJECT shall be as defined by THIS AGREEMENT.

3. THE ENGINEERING CONTRACT. The NRD shall enter into a professional services contract with ENGINEERS in the form as determined by the NRD in its sole discretion, pursuant to which the ENGINEERS shall undertake tasks including, but not limited to, the preparation of contract documents and preparation of documents to obtain the necessary permits and provide an opinion of probable construction costs. The cost of the ENGINEERS shall be deemed to be GENERAL COSTS, as defined in Paragraph 7 below, of the PROJECT.

4. CITY TECHNICAL ASSISTANCE. The CITY shall provide technical assistance to the NRD and shall attend all necessary meetings regarding the PROJECT, as may be requested by the NRD.

5. GENERAL COSTS. The costs and billings resulting from the ENGINEERS’ contract referenced in Paragraph 3, above, shall constitute the GENERAL COSTS of the

PROJECT. NRD and CITY agree that execution of this Interlocal Cooperation Agreement does not commit either party to move forward with the PROJECT after receiving the plans to design and engineer the project.

6. PRELIMINARY DESIGN. The ENGINEERS shall prepare preliminary plans and specifications for the PROJECT (“the **PRELIMINARY PLANS**”), in accordance with the design criteria provided by the NRD, the CITY’s design standards, rule and regulations, and the applicable Nebraska state and federal statutes, rules and regulations.

7. APPROVAL OF PRELIMINARY PLANS. After the ENGINEERS’ completion of the PRELIMINARY PLANS, and approval of the same by the NRD, the PRELIMINARY PLANS shall be submitted to the CITY for its written approval. The CITY shall have thirty (30) days to provide written approval or requests for amendments to the NRD. If the CITY fails to provide written feedback within thirty (30) days, the NRD may approve the PRELIMINARY PLANS in its sole discretion.

8. PREPARATION OF FINAL PLANS. After receipt by the NRD of the CITY’S written approval of the PRELIMINARY PLANS or if the CITY fails to provide written feedback within the thirty (30) day time period, the NRD shall direct the ENGINEERS to prepare final plans and specifications for the PROJECT (“the **FINAL PLANS**”), in accordance with the design criteria provided by the NRD, the CITY’s design standards, rule and regulations, and the applicable Nebraska state and federal statutes, rules and regulations.

9. APPROVAL OF FINAL PLANS FOR PROJECT. After the ENGINEERS’ completion of the FINAL PLANS and approval of the same by the NRD, the FINAL PLANS shall be submitted to the CITY for its written approval. The CITY shall have thirty (30) days to provide written approval or requests for amendments to the NRD. If the CITY fails to provide written feedback within thirty (30) days, the NRD may approve the FINAL PLANS in its sole discretion.

10. CITY CONTRIBUTION. As its contribution towards the aforesaid costs of the PROJECT, the CITY shall pay to the NRD one hundred percent (100%) of the billings rendered to the NRD for the GENERAL COSTS associated with or relating to the

CITY CULVERTS not to exceed a total amount of three hundred and fifty thousand dollars (\$350,000). The NRD shall submit an invoice to the CITY after the FINAL PLANS have been approved by the CITY or the thirty (30) day period set forth in paragraph 9 of this AGREEMENT has expired. Within forty-five (45) days of the CITY'S receipt of the invoice, the CITY shall pay the NRD the amount invoiced.

11. NRD CONTRIBUTION. In addition to the costs associated with being the lead agency for the PROJECT, the NRD shall be solely responsible for the billings rendered to the NRD for the GENERAL COSTS associated with or relating to the NRD CULVERTS and OTHER CULVERTS.

12. EFFECTIVE DATE AND TERM. THIS AGREEMENT shall be in force and effect upon and after its execution by the parties hereto. The term of THIS AGREEMENT shall expire on December 31, 2021 or when the CITY has made its full and final contributions in accordance with Paragraph 12, whichever occurs first. THIS AGREEMENT may be terminated before its expiration by mutual agreement of the parties in writing.

13. NON-DISCRIMINATION. The parties hereto shall not, in the performance of THIS AGREEMENT, discriminate or permit discrimination by any of its contractors in violation of federal or state laws or local ordinances because of race, disability, color, sex, age, political or religious opinions, affiliations or national origin.

14. DRUG FREE POLICY. Each party provides assurance that it has established and maintains a drug free workplace policy.

15. ENTIRE AGREEMENT. THIS AGREEMENT contains the entire agreement between the parties, and each party hereto agrees that neither the other party, nor any of the officers, agents, employees or contractors of the other party, have made any representations or promises with respect to the PROJECT not expressly contained herein. THIS AGREEMENT may be amended upon mutual written consent of the parties.

16. DEFAULT. If either party shall default hereunder, the other party shall be entitled to enforce specific performance of THIS AGREEMENT or may have any other remedy allowed by law or equity.

17. NOTICES. All notices herein required shall be in writing and shall be served on the parties at their principal offices, or at such other address as either party may hereafter designate to the other party in writing for service of notice to itself. The mailing of a notice by certified or registered mail, return receipt requested, or delivery thereof by messenger, shall be sufficient service hereunder.

18. BINDING EFFECT. The provisions of THIS AGREEMENT shall inure to the benefit of, and shall be binding upon, the successors in interest and assigns of the respective parties hereto.

19. APPLICABLE LAW. Each party to THIS AGREEMENT shall follow all applicable federal and state statutes and regulations in carrying out the faithful performance and terms of THIS AGREEMENT. The parties agree that any consultants or contractors retained for the PROJECT shall comply with the Equal Opportunity Clause and LB 403 as set forth in Exhibits B-1 and B-2. Nebraska law will govern the terms and the performance under this Agreement.

20. SEVERABILITY. In the event any portion of THIS AGREEMENT is held invalid or unenforceable for any reason, it is agreed that any such invalidity or unenforceability shall not affect the remainder of THIS AGREEMENT, the remaining provisions shall remain in full force and effect, and any court of competent jurisdiction may so modify any objectionable provision of THIS AGREEMENT so as to render it valid, reasonable and enforceable.

21. CAPTIONS. Captions used in THIS AGREEMENT are for convenience and not for use in the construction of THIS AGREEMENT.

22. INTERLOCAL COOPERATION ACT PROVISIONS. THIS AGREEMENT shall not create any separate legal or administrative entities. It shall be administered jointly by the parties, through one representative to be designated by and on behalf of each party. Each party shall separately finance and budget its own duties and functions under THIS AGREEMENT. There shall be no jointly held property as a result of THIS AGREEMENT. Upon terminations, each party shall retain ownership of the property it owns at the time of termination. THIS AGREEMENT does not authorize the levying, collecting or accounting of any tax.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed THIS AGREEMENT, on the respective dates hereinafter indicated, pursuant to authorizing resolutions duly adopted at regularly-called meetings of their governing bodies.

The CITY has executed THIS AGREEMENT on _____, 2021.

The CITY of OMAHA

By _____

JEAN STOTHERT, Mayor

Attest:

City Clerk

The NRD has executed THIS AGREEMENT on _____, 2021.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
JOHN WINKLER, General Manager